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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE, *Petitioner*

v.

HOUSING AUTHORITY OF THE CITY OF DURHAM

On Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR HOUSING AUTHORITY OF THE CITY OF DURHAM

QUESTION PRESENTED

Did the Supreme Court of North Carolina violate the Constitution of the United States in sustaining the eviction judgment of the Superior Court of the State in an action brought by the Housing Authority against

the Petitioner, an occupant of one of its dwelling units, in the absence of any finding that there was an unconstitutional requirement imposed as a condition of the renewal of Petitioner's lease?

STATEMENT

The Petitioner and the Housing Authority of the City of Durham, on the 11th day of November, 1964, entered into a written lease, leasing to the Petitioner, Thorpe, an apartment in a building owned by the Housing Authority of the City of Durham for a term beginning November 11, 1964, and terminating at Midnight November 30, 1964 (R. 11). The lease provided that it would automatically be renewed for successive terms of one month each and that the Housing Authority could prevent such automatic renewal by giving to the tenant notice, in writing, of such intention fifteen days prior to the last day of the term, and that the tenant could prevent the automatic renewal by giving a like notice to the Housing Authority. There was no provision in the lease requiring a reason to be assigned for a decision not to renew the lease by either party. On the 12th day of August, 1965, the Housing Authority gave written notice to the Petitioner that the lease would not be renewed after the term ending August 31, 1965 (R. 18). After the term ended on August 31, 1965, the Petitioner, Thorpe, refused to vacate the premises and continued to occupy same (R. 21).

The Housing Authority brought an action in Summary Ejectment before a Justice of the Peace in Durham County (R. 1); and after a hearing before the Justice of the Peace, participated in by the Petitioner,

Thorpe, and her counsel, Judgment was entered by the Court requiring the defendant, Thorpe, to vacate the premises. The Petitioner then gave notice of appeal to the Superior Court of North Carolina (R. 4).

Upon the case coming on for hearing in the Superior Court of Durham County, North Carolina, both parties waived trial by jury and stipulated that the Judge presiding should find the facts upon the stipulations made and affidavits filed and render thereon judgment (R. 6). In her affidavit filed in this action, the Petitioner, Thorpe, asserted that the reason for her eviction was her efforts to organize the tenants of McDougald Terrace, the housing project belonging to the Housing Authority (R. 8). It was stipulated by both parties that it was alleged by the Petitioner, Thorpe, that the reason she was being evicted was due to her participation in the organization of the Parent's Club in the McDougald Terrace Project (R. 6).

The Superior Court then found as fact that the Housing Authority was the owner of the property occupied by the Petitioner, Thorpe; that the lease was duly executed; that the Petitioner, Thorpe, duly received a written notice from the Housing Authority terminating a lease effective August 31, 1965; that the Petitioner, Thorpe, failed to vacate the premises after the 31st day of August, 1965; and that the organizational activity of the Petitioner was not the reason for giving her notice that the lease would not be renewed (R. 19).

The Petitioner then appealed to the Supreme Court of North Carolina, and there the judgment of the Superior Court was affirmed.

ARGUMENT

INTRODUCTION

This case, on its facts, is not a test of the propositions asserted by the Petitioner. Here, the Housing Authority of the City of Durham, a corporation organized and operating under the laws of the State of North Carolina, acting neither as the agent of the State nor of the Federal Government, instituted an action in the Courts of the State of North Carolina to evict a tenant occupying one of the dwelling units in a housing project owned by the Housing Authority. This tenant continued to occupy these premises after the end of the term of her lease. The tenant contends she was denied due process of law because the Courts of North Carolina did not require the Housing Authority, as a condition to obtaining judgment of eviction, to show that it had both notified the tenant of specific reasons for failing to renew her lease and given her an administrative hearing on the question of the renewal of her lease. The case arises in the context of a specific finding of fact by the Court that Petitioner was not evicted in connection with any exercise on her part of First Amendment rights to freedom of association. The Housing Authority was under no statutory or constitutional compulsion to renew the Petitioner's lease after it expired by its own terms; the absence of an assigned and expressed reason for its unwillingness to renew the lease did not give rise to any statutory or constitutional right of occupancy by the Petitioner. In resorting to the State Courts in an action of ejectment, the Housing Authority did not act as a governmental unit and did not exert any powers or privileges in excess of those vested in private proprietors.

Assuming that the Petitioner did not have a constitutional right to continue occupancy of the dwelling space after the expiration of the term of her lease, on this record it cannot be argued that additional procedural safeguards are required to insure that some other constitutional right she may have had not be denied by indirection. On this record, it cannot be assumed that the Courts of the State of North Carolina would permit the exclusion of this Petitioner or any other prospective tenant for the purpose of taking from her some right provided by the Constitution.

The Housing Authority contends that there is no constitutional prohibition to the use of lease and the normal legal concepts relating to landlord and tenant in management of its housing projects, absent, at least, the positive showing that there is some act by the Housing Authority pursuant to a purpose to deny a tenant some constitutional right, continued occupancy of the dwelling unit not being a constitutional right. Secondly, the Housing Authority, acting in its proprietary capacity, had no constitutional duty to justify to this tenant its decision not to renew her lease; and, in abiding by the terms of the lease, did not act arbitrarily. Further, the existing procedures in the State Courts are sufficient to enable a tenant or a prospective tenant to assert any alleged violation of constitutional rights and that in this case, no violation of this Petitioner's constitutional rights has been shown.

I.

The Lease Shown in the Record Is Not an Unconstitutional Method of Prescribing and Defining the Tenant's Right of Occupancy

In the management of its low-rent housing projects, the Housing Authority has, in this case, and presumably in all cases, regulated occupancy by using the legal devices and concepts normally involved in and arising from the landlord-tenant relationship. Both the United States Housing Act of 1937, as amended, and the North Carolina "Housing Authority Law" contemplated and, in fact, require that this be done. The State Statute says, in several places, that the Housing Authority may "rent or lease the dwelling accommodations".[1] Words appropriate to these concepts are also contained in the Federal Statute. Neither Statute undertook to set out a form for such lease nor to prescribe the length of any term, but did adopt eligibility criteria for prospective tenants and for continued occupancy.[2]

The statutory and Federal administrative eligibility requirements for prospective tenants, while emphasizing greater local responsibility by the Local Housing

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[1] See N.C. G.S. 157-29. The decision of the Supreme Court of North Carolina in this case is authority for this proposition.

[2] Housing Act of 1961, Section 10(g) provides in part: "(1) The maximum income limits fixed the Public Housing Agency shall be subject to the prior approval of the Authority (PHA) and the Authority may require the Agency to review and revise such limits if the Authority determines that changed conditions in the locality make such revisions necessary in achieving the purpose of the Act. (2) The Public Housing Agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of those displaced by Urban Renewal or other governmental action, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age and disability, housing conditions, urgency of housing need, and sources of income . . ."

Authorities, seem primarily designed to limit the tenants to low-income families who are not able to find decent housing within their means elsewhere and do not, certainly, require that every eligible family be accepted as a tenant. The annual contributions contract between the Local Housing Authority and the Federal Housing Assistance Administration, in the form which we believe to be generally applicable in the nation, provides that a Local Authority shall not permit any family to occupy a dwelling unit in any project except pursuant to a written lease, which lease shall contain all relevant provisions necessary to meet the requirements of the Housing Act of 1937, as amended, and the annual contributions contract. The Local Housing Authority Management Handbook published by Public Housing Administration (now Department of Housing and Urban Development) states that: "Whenever a family is admitted to occupancy in a low-rent project there is established a landlord-tenant relationship with contractual obligations to be fulfilled by both parties."[3] Further, Executive Order No. 11063

[3] Part IV, Section 1, Paragraph 6a. The whole sub-paragraph reads as follows: "Whenever a family is admitted to occupancy in a low-rent project there is established a landlord-tenant relationship with contractual obligations to be fulfilled by both parties. These obligations include many of those in standard landlord-tenant leases, such as the provision by the landlord of designated housing space and utilities and the payment of rent by the tenant. But in low-rent public housing there are also the following special obligations of a tenant to be reflected in the lease: (1) Furnish the Local Authority, upon request, with information necessary to determine eligibility for continued occupancy, the appropriate rent and dwelling size required. (2) Pay an increased rent when appropriate for its redetermined income or family composition. (3) Transfer to a unit of appropriate size (at such time as the Local Authority may designate) when a change in family composition warrants a different size dwelling. (4) Vacate if the family becomes overincome or becomes subject to removal through violation of any obligation of tenancy."

of November 20, 1962, prohibited discrimination because of race, color, creed or national origin in the leasing of such dwelling units. This lease is a valid contract, though entered into by a quasi-municipal corporation and an individual. *Lynch* v. *United States*, 292 U.S. 571.

Using the lease device, a normal landlord and tenant instrument, tends to prevent the segregation of the tenants in this project from the society in which they live. In *Flemming* v. *Nestor*, 363 U.S. 603, both Justice Black and Justice Douglas quote, with approval, a statement made by Senator George when the Social Security Act was passed: "It comports better than any substitute we have discovered with the American concept that free men want to earn their security and not ask for doles—that what is due as a matter of earned right is far better than a gratuity. . . ." And, so, here the Federal Government has not provided institutions in which all indigents may be inmates, but has granted financial assistance to quasi-municipal corporations organized under state law for the purpose of injecting into the housing rental market a substantial number of decent, low-rent dwelling units.

This gives the Housing Authority no governmental authority with respect to its tenants and no authority greater than that possessed by any other landlord. The interpretation and enforcement of the lease is a matter for the Courts. There is no Federal administrative, statutory, or constitutional requirement that the term of such lease be for the duration of the lifetime of the tenant or for the duration of his eligibility, there being no guarantee that all members of the eligible class shall have low-rent housing within a housing authority

project. There is no showing in this case that this lease as construed by the Courts of North Carolina with reference to its termination date did not meet the requirements of the Housing Act of 1937, as amended, nor of the annual contributions contract between the Housing Authority and the Federal Housing Assistance Administration. Here, statutory eligibility did not give rise to a right of occupancy; such right existed only by virtue of the lease agreement.

The State Court has held that the lease was valid and that its provisions as to termination did not violate either the North Carolina Housing Authorities Law nor the North Carolina eviction statutes. This was a North Carolina contract, and the Court below said: "This lease was terminated in accordance with its express provisions at Midnight 31 August 1965." *Erie R. Co.* v. *Tompkins,* 304 U.S. 64; *Tucker* v. *Texas,* 326 U.S. 517; *Bell* v. *Maryland,* 378 U.S. 226; *Barsky* v. *Board of Regents,* 347 U.S. 442.

Similar leases have been generally sustained by the Courts. *Walton* v. *City of Phoenix,* 69 Ariz. 26, 208 P. 2d 309 (1949), *Chicago Housing Authority* v. *Ivory,* 341 Ill. App. 282, 93 NE 2d 386 (1950), *Brand* v. *Chicago Housing Authority,* (CCA 7) 120 F. 2d 786 (1941), *Pittsburgh Housing Authority* v. *Turner,* 201 Pa. Super. 62, 191 A. 2d 869 (1963), *Columbus Metropolitan Housing Authority* v. *Simpson,* 85 Ohio App. 73, 85 NE 2d 560 (1949) are all in accord with the decision of the North Carolina Supreme Court in this case and are, on the facts presented, directly in point.[4]

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[4] In *Walton* v. *City of Phoenix,* (69 Ariz. 26, 208 P.2d 309 (1949)), Undall, Justice, said in delivering opinion of Court: "It would seem to be defendants contention that these state statutes (eviction statutes) have no application to other than private land-

II.

The Housing Authority's Decision Not to Renew the Petitioner's Lease by Giving Her Notice Prescribed by the Terms of the Lease and Without Assigning to Her Reasons Therefor and Without a Preliminary Hearing was not a denial of Due Process

The Petitioner apparently wanted the Housing Authority to assign to her a specific reason for its decision not to renew her lease. The reasoning must have been that by attacking the assigned reason, she would either cause the Housing Authority to change its mind or cause her lease to be renewed or her occupancy continued without a lease by the Courts whether the Hous-

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lords and that insofar as the plaintiff is concerned the whole matter is governed and controlled by the United States Housing Act of 1937 as amended. Defendants, however, fail to direct our attention to any specific provisions of the Act which support this theory. As a matter of fact, a reading of the entire act, with its amendments, as well as the related Federal Acts on National Housing, Title 50 U.S.C.A. War Appendix, leads one irresistibly to the opposite conclusion." In *Brand* v. *Chicago Housing Authority*, the Court said: "Any property right acquired by the plaintiffs was circumscribed by the terms and conditions upon which it was founded. True, as tenants, they acquired the right of possession, but this right was limited by the terms of the lease by which such right was obtained. By express provision thereof, either party was entitled to cancellation on fifteen days' notice to the other. It is our opinion that this provision with reference to the termination of the tenancy is valid and binding upon the plaintiffs in the same manner as though the lessor had been a private person rather that a Governmental Agency. . . . The fact that the Government selected plaintiffs as the object of such beneficence does not preclude it from determining at a later time that the purpose of the Act will be better served by the selection of some other family of the same or lower income class. To hold, as plaintiff would have us do, that the mere selection of a tenant carries with it a continuing right of tenure irrespective of the terms and conditions upon which the tenancy was founded, would not only contravene the purpose and policy of the Act, but would come near to destroying it."

ing Authority agreed or not. She contends that the United States Constitution places the burden on the Housing Authority to set up a "reason" for her to shoot at. Further, she also appears to contend that the reason can be attacked either because it denies her some constitutionally protected privilege such as the right of assembly under the First Amendment or that it is just not sufficient. In following the provisions of the lease and the published directives of the Federal Public Housing Administration[5] the local Housing Authority did not act arbitrarily.

We respectfully submit that there is no constitutional requirement that the reason for the Housing Authority's decision be sound, wise, or judicious, or one that would satisfy the Petitioner or any other landlord or agency. In other words, the decision not to enter into a lease with this Petitioner does not have constitutional connotations unless it is for the purpose of or results in the denial to her of some constitutional right such as the right of assembly. This is because the petitioner does not have a constitutional right to have a lease or to have a renewal of her lease after the expiration thereof and because in making such decisions, the Housing Authority is not acting as a government even though some public funds are involved in the support

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[5] Local Housing Authority Management Handbook, Part IV, Sec. 1, Par. 6d(1): It is recommended that each Local Authorities' lease "Be drawn on a month-to-month basis whenever possible. This should permit any necessary evictions to be accomplished with a minimum of delay and expense upon the giving of a statutory Notice to Quit without stating reasons for such notice."

of its operation.[6] It has no authority over its tenants or prospective tenants except those that arise out of the terms and provisions of the lease. Under the applicable statutes and regulations it does have authority to refuse to enter into leases with certain members of the class of persons eligible and to enter into leases with others within that class. The applicable statutes do not require the Housing Authority to enter into a lease with an eligible Richard Roe even though there

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[6] In *Cafeteria and Rest. Workers Union* v. *McElroy*, the Court said: "As these and other cases make clear, consideration of what procedures due process may require under any given set of circumstances must begin with the determination of the precise nature of the Government function involved as well as of the private interest that has been affected by Governmental action. Where it has been possible to characterize that private interest (perhaps an oversimplification) as a mere privilege subject to the Executives plenary power, it has traditionally been held that notice and hearing are not constitutionally required. . . .

"What then was the private interest affected by Admiral Tyree's action in the present case? It most assuredly was not the right to follow a chosen trade or profession. Rachel Brawner remained entirely free to obtain employment as a short-order cook or to get any other job, either with M & M or with any other employer. All that was denied her was the opportunity to work at one isolated and specific military installation.

"Moreover, the governmental function operating here was not the power to regulate or license, as lawmaker, an entire trade or profession or to control an entire branch of private business, but rather, as proprietor, to manage the internal operation of an important Federal military establishment.

"Thus, the nature both of the private interest . . . and the governmental power which has been exercised makes this case quite different from that of the lawyer in *Schwire*, supra, the physician in *Dent*, supra, and the cook in *Raich*, supra. . . .

"We may assume that Rachel Brawner could not constitutionally have been excluded . . . if the announced grounds for her exclusion had been patently arbitrary or discriminatory—that she could not have been kept out because she was a Democrat or a Methodist."

are vacant dwelling units in its properties, nor to assign a reason why it does enter into a lease with eligible John Doe and refuses to do so with Richard Roe. These are matters within the managerial and proprietory responsibilities of the Housing Authority. If it appeared as a fact that the Housing Authority did not select Richard Roe because he was a Methodist or did lease to John Doe because he was a Lumbee Indian, constitutional overtones could be heard. As the Senate Report accompanying the Housing Act of 1961 states: "Section 206 would create greater flexibility in the public housing program by requiring greater responsibility for administering the program at the local level. Existing law contains very detailed and complicated orders of preferences and eligibility to be applied among the low-income families. It is impossible to establish rigid nationwide orders of this kind which will meet all local circumstances. Local Housing Authorities have had many years of experience under these Federal requirements and should be relied upon to be competent and fair; and there is no question that they are in a much better position than the Federal Government to ascertain the myriad factors that may be involved in a particular situation and to determine their proper weight." It is submitted that the Constitution is not more restrictive than the Statute.

Nor is a hearing by the Housing Authority or notice of a specific reason procedural safeguards which should be imposed by this Court to protect the Petitioner from the invasion of some constitutional right other than her alleged right of occupancy of the Housing Authority's property. The Housing Authority having no powers greater than those of other proprietors, the procedures of the Court supply such safeguards.

The cases cited in Petitioner's brief support this proposition. See *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955), and *Holt* v. *Richmond Redevelopment and Housing Authority,* Civil Action No. 4746, E.D. Va. Sept. 7, 1966. This Court has not required this in other cases. In *Marsh* v. *Alabama,* 326 U.S. 501, for example, there seems to be no requirement that every stranger in the company town be given a hearing as a constitutional safeguard before ordering him out. The possibility that he may turn out to be a Baptist missionary does not give rise to such a constitutional requirement. If it appears as a fact that his presence was pursuant to some constitutional right, then he could not be penalized by state law.

Cases cited in Petitioner's brief and in this brief illustrate the point. In *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N.E. 2d 522 (1954), the Housing Authority notified the tenant that it was terminating the lease because of the tenant's failure and refusal to subscribe to a Loyalty Oath required by Illinois statute. The Court held that this was an invalid termination even though the Housing Authority could have terminated the tenancy upon fifteen (15) days' written notice without giving a reason. In *Chicago Housing Authority* v. *Ivory,* 341 Ill. App. 282, 93 N.E. 2d 386 (1950) and in *Brand* v. *Chicago Housing Authority,* (CCA 7), 120 F. 2d 786 (1941), it was held that the Housing Authority could terminate a month-to-month tenancy after giving due notice of termination without assigning any reason other than that the lease had terminated under its terms. In *Holt* v. *Richmond Housing Authority,* (C.A. No. 4746 E.D. Va. (1966)), the Court made the same distinction, there finding as a fact that the tenant was given notice of

termination because he was president of the Civic Association.[7]

Housing Authority of Los Angeles v. *Cordova,* 130 Cal. App. 2d Supp. 883, 279 P. 2d 215 (1955), *Lawson* v. *Housing Authority of Milwaukee,* 270 Wisc. 269, 70 N.W. 2d 605 (1955), *Rudder* v. *United States,* 226 F. 2d 51 (D.C. Cir. 1955), and *Kutcher* v. *Housing Authority of Newark,* 20 N.J. 181, 119 A. 2d 1 (1955), were all cases in which there was a showing of an unconstitutional condition placed upon continued occupancy. Other cases, however, in which there was no showing of such an unconstitutional condition but merely notice to vacate by reason of the lease termination without administrative hearing, sustain the termination and eviction of the tenant. *Walton* v. *City of Phoenix,* supra, *Brand* v. *Chicago Housing Authority,* supra, *Chicago Housing Authority* v. *Ivory,* supra, *Pittsburgh Housing Authority* v. *Turner,* supra, *Columbus Metropolitan Housing Authority* v. *Simpson,* supra.

Cases in which the governmental agency is acting in a judicial or quasi-judicial manner and in which the rights determined arise by virtue of law are not authority against our point here. In this category are *Willner* v. *Committee on Character and Fitness,* 373 U.S. 96, and *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, which held that requirements of procedural

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[7] In this case the Court cites *Housing Authority* v. *Thorpe* 267 N.C. 431 (1966) the decision of the Supreme Court of North Carolina being considered here, and said: "There, however, the Court found as a matter of fact that whatever may have been plaintiff's reason for terminating the lease, it was neither because the defendant had engaged in efforts to organize the tenants nor because she had been elected President of a tenant's group. It is that factual distinction which makes that decision inapplicable to case at bar."

due process must be met before a state can exclude a person from practicing law. In *Morgan* v. *United States,* 304 U.S. 1, there was no constitutional issue decided but the Court there did refer to the quasi-judicial functions of administrative agencies, in that case the Secretary of Agriculture, in fixing maximum rates at Kansas City Stockyard. To like effect are the deportation cases, holding that there must be an effective review of administrative action by regular judicial branch of the government. *Ng Fung Ho* v. *White,* 259 U.S. 276, held that persons about to be deported were entitled to a judicial determination of their claims that they are citizens of the United States. In *Kwong Hai Chew* v. *Colding,* 344 U.S. 590, the Court did not decide a constitutional issue.[8]

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[8] In *Sherbert* v. *Verner,* 374 U.S. 398, an unemployment compensation claimant could not be disqualified from these benefits because of her refusal to work on Staurday, based on her religious beliefs. In *Speiser* v. *Randall,* 357 U.S. 513, veterans in California claiming tax exemption could not be required to execute Oath of Non-adversity to Overthrow the Government as a condition to such exemption. *Slochower* v. *Board of Education of New York City,* 350 U.S. 551, the Court found it a denial of due process to discharge an employee merely because he relied upon the Fifth Amendment plea of self-incrimination. In *Torcaso* v. *Watkins,* 367 U.S. 488, the Maryland requirement that a Declaration of Belief in God was a necessary qualification for public office was unconstitutional. In *Wieman* v. *Updegraff,* 344 U.S. 183, the Oklahoma Loyalty Oath for public employees was unconstitutional. In *Shelton* v. *Tucker,* 364 U.S. 479, while there seemed to be no question about the right to discharge a teacher without notice or hearing, it was held that it was unconstitutional to require every teacher as a condition of employment to file annually an affidavit listing every organization to which he has belonged within the preceding five years. Compare *Beilan* v. *Board of Public Education,* 357 U.S. 399, in which the Court held that a Board of Public Education could constitutionally discharge a teacher who refused to answer questions, and *Barsky* v. *Board of Regents,* 347 U.S. 442, upholding the action of New York Board of Regents to suspend license to practice medicine.

In the case at bar the Housing Authority was doing no more than enforcing the terms of its lease, and the courts of the state were available, as the course of events proved, to provide an effective judicial review and remedy for both parties.

The cases decided by lower Federal Courts involving the expulsion of students before they had finished their term of study are clearly not analogous. For one thing, there was no question of refusing to renew a contract, the term of which had expired, by notice provided for in the contract. For example, there was evidence and there were findings that those expulsions were punitive measures taken because of student participation in Civil Rights activities. Such is not the case here. See *Dixon* v. *Alabama State Board of Education,* 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930; *Woods* v. *Wright,* 334 F. 2d 369 (5th Cir. 1964); *Knight* v. *State Board of Education,* 200 F. Supp. 174 (M.D. Tenn. 1961). Moreover, there is a conflict apparently among the lower courts on this subject, *Steier* v. *New York State Education Commissioner,* (CCA 2d) 271 F. 2d 13 (1959).

III.

The Proceedings in the State Court Instituted by the Housing Authority Did Not Deny to the Petitioner Any Constitutional Right

It is apparently not denied that the Petitioner was in the State Courts pursuant to proper summons and was given a fair hearing at all stages of the action, including opportunity to present evidence and to cross-examine witnesses. The constitutional complaint asserted by the Petitioner was resolved against her when the trial court found as a fact that she was not evicted

because of any of her organizational activities as she alleged. For this reason, if that would amount to an unconstitutional condition placed upon the renewal of her lease, it is not before the Court in this case.

The Petitioner having adequate opportunity to do so, the burden is upon her to show in what respect, if any, her constitutional rights were violated. *Snowden* v. *Hughes*, 321 U.S. 1.[9] As Justice Holmes said in *Chin Yow* v. *United States*, 208 U.S. 8: "The courts must deal with the matter somehow, and there seems to be no way so convenient as a trial of the merits before the judge."

The Petitioner is not asking for equal protection of the law; she is asking for a greater protection than that enjoyed by others. The Petitioner cites Professor Jones, but he says that in the welfare state concepts of "traditional law" should prevail in "encounters" between "the poor" and public officials. He praises "our legal orders" which have "achieved a reasonably effective procedure for vindication of such other traditional interest as property rights, contract rights, and rights to compensation for injury caused by another's fault". In this case, the Petitioner was not denied the process of "traditional law". The Housing Authority was re-

[9] In this case Chief Justice Stone said: "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike is not denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself. But a discriminatory purpose is not presumed; there must be a showing of 'clear and intentional discrimination'".

quired by statute and by its lease to apply to the courts and present its case like any other litigant.

The Petitioner in her brief sets out North Carolina statutes relative to Summary Ejectment and, we take it, makes no serious contention that there is anything in the procedures there prescribed that is in violation of the Federal Constitution. Perhaps it should be pointed out that there were substantial discovery procedures available to the Petitioner in the state court, and these for the convenience of the Court are set forth in the Appendix to this brief.

Once in court, the Petitioner not only asserted that the action could not be pursued because the Housing Authority had failed to give her a reason for not wishing to renew her lease and also failed to give her an administrative hearing on that subject, but also at the same time asserted that the reason her lease was not renewed was that she had engaged in some organizational activities among the tenants. Once the Court had determined as a matter of fact that the alleged unconstitutional condition placed upon the renewal of her lease did not exist, she was left with the contention that the action should be dismissed by the Court, either because of the failure of the Housing Authority to come forward with any reasons satisfactory to the Court for its decision not to renew or because the Housing Authority before going into Court had not undertaken to give her a reason or hearing thereon. From Petitioner's brief, it appears that the contention is that the trial court should have dismissed the action on a showing that the Housing Authority had not conducted a hearing prior to the institution thereof.

If that which a Housing Authority can do for no reason it cannot do for an unconstitutional reason, it

does not follow, as a procedural safeguard, that some reason must be stated in order to be sure that it is not unconstitutional. This is somewhat the difference between a demurrer and an answer, and surely it is stretching constitutional requirements to construe them as demanding one rather than the other. It is really difficult here to see how the procedures available were so inadequate and so oppressive and discriminatory upon this Petitioner as to amount to a violation of constitutional requirement.

The crux of the whole matter seems to be, aside from the procedural point, the Petitioner construes the language of the North Carolina Supreme Court as meaning that it would have reached the same result had there been a finding that the Housing Authority was imposing some unconstitutional condition upon the renewal of the lease. This is mere speculation and amounts to asking this Court to reverse the decision of the North Carolina Supreme Court on constitutional grounds because of a possible construction of the meaning of one sentence in its opinion applied to assumed facts not contained in this record. Projecting the speculation, even if the Court had found that the Housing Authority was not an agency of the State, which it did not, it might have felt itself bound by the rule of *Shelley* v. *Kraemer,* 334 U.S. 1, and *March* v. *Alabama,* 326 U.S. 501, to refuse to evict for an unconstitutional condition. Surely, presuming that the North Carolina Court was acting in accord with the Federal Constitution, its language should be read in light of the record before it; and, on that record, it was immaterial what may have been the reason for the Lessor's unwillingness to continue the relationship of landlord and tenant, since no violation of the Constitution had

been shown. Only if it can be said defendant had some right to occupy the dwelling unit conferred upon her by the United States Constitution did the decision of the State Courts enforcing the lease violate that Constitution.

CONCLUSION

No adequate constitutional reason has been shown by the Petitioner for overruling the Judgment of the North Carolina Superior Court, the trial Court in this case. The hearing Petitioner received in the Courts of the State was fair and impartial, giving her an opportunity to be heard and to present any contentions that she may have had concerning her constitutional rights; and the Court in finding the facts in the case acted on competent and adequate evidence. The burden under these circumstances should be upon the Petitioner to show that the Housing Authority and the State Courts have violated some constitutional right that she may possess. In the absence of any such showing, the Judgment of the Court below should be allowed to stand.

Respectfully submitted,

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APPENDIX

State of North Carolina Statutory Provisions

Selected Provisions of North Carolina Statutes Relating to Examination of Parties

§ 1-568.10. PRELIMINARY PROCEDURE FOR EXAMINATION BEFORE EXAMINING PARTY'S INITIAL PLEADING HAS BEEN FILED.—(a) Before a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who may be examined by him as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced and the purpose thereof;

(2) That, in order to prepare his complaint, petition or answer, it is necessary for the applicant to secure information from the person proposed to be examined about certain matters, which matters must be designated with reasonable particularity;

(3) That the information sought is not otherwise available to the applicant, together with a statement of the reasons therefor;

(4) That, if the person proposed to be examined is not a party, the action is being prosecuted or defended in his behalf, together with facts in support thereof;

(5) That the application is made in good faith; and

(6) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5;

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination; and

(4) Designating the particular matters about which the person may be examined.

§ 1-568.11. Preliminary Procedure for Examination After Initial Pleadings Have Been Filed.—(a) After a party has filed his complaint, petition or answer, he may, without notice to other parties, apply to the clerk or judge for an order for the examination of any person who has also filed his complaint, petition or answer, as the case may be, or on whose behalf a complaint, petition or answer has been filed as provided by G.S. 1-568.4.

(b) The application must be in the form of, or supported by, an affidavit showing:

(1) That the action has been commenced;

(2) That the applicant has filed complaint, petition or answer;

(3) That the applicant desires to examine a designated person who has filed a petition, complaint or answer or on whose behalf a petition, complaint or answer has been filed;

(4) That the examination should be held at a place designated in the affidavit, together with facts showing the reasons therefor.

(c) If the judge or clerk finds that the facts are as set out in the affidavit, he shall make an order:

(1) Appointing a commissioner to hold the examination;

(2) Fixing the time and place of the examination, subject to the provisions of G.S. 1-568.5; and

(3) Directing the person to be examined to appear before the commissioner at such time and place for examination.